

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CITY COUNCIL FOR CITY OF DETROIT,  
ALONZO W. BATES, KENNETH V. COCKREL,  
JR., SHEILA M. COCKREL, BARBARA-ROSE  
COLLINS, KAY EVERETT, MARYANN  
MAHAFFEY, SHARON MCPHAIL, and  
ALBERTA TINSLEY-TALABI,

Plaintiffs-Appellants,

v

MAYOR OF DETROIT, KWAME KILPATRICK,  
and CITY OF DETROIT ZOOLOGICAL  
DIRECTOR,

Defendants-Appellees.

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UNPUBLISHED  
October 7, 2004

No. 248724  
Wayne Circuit Court  
LC No. 03-303078-AW

Before: Schuette, P.J., and Bandstra and Meter, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order of summary disposition that dismissed plaintiffs' suit seeking both a writ of mandamus and declaratory judgment. We affirm.

**I. FACTS**

Plaintiffs are elected city council members of Detroit; defendant Kilpatrick is the elected mayor. Plaintiffs appeal the denial of declaratory judgment and mandamus regarding changes to the organization and operation of the city's Consumer Affairs Department.<sup>1</sup> The mayor proposed reallocating the department's budget and reassigning its personnel to other city offices with related work. Plaintiffs rejected the proposal. Defendant then notified plaintiffs that the department personnel had been physically relocated to those other offices, while still assigned to the Consumer Affairs Department.

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<sup>1</sup> In addition to the matter on appeal to this Court, plaintiffs had originally sought mandamus over the closure of the Belle Isle Zoo which plaintiffs did not appeal.

Plaintiffs sought a declaratory judgment that the mayor “is duty bound to follow the Charter and to staff and maintain a Consumer Affairs Department.” Plaintiffs also sought a writ of mandamus to compel the mayor to reverse the transfers of the department’s functions and to “immediately staff and maintain a Consumer Affairs Department and further, to see to it that all functions set forth in the Charter are carried out,” and to compel defendant to “immediately appoint a full-time Department director, as well as a Consumer’s Council, as required by § 7-603 of the Charter.” The mayor denied that there were any grounds for mandamus to issue, asserting that the “Consumer Affairs Department has a director, staff employees and is performing all functions required of that department under the Charter and EOP.” After the show cause hearing on plaintiffs’ motion, the court granted summary disposition to the mayor.

## II. DECLARATORY JUDGMENT

### A. Standard of Review

“This Court reviews the grant or denial of summary disposition *de novo* to determine if the moving party is entitled to judgment as a matter of law. In making this determination, the Court reviews the entire record.” *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). “We review actions in the nature of declaratory judgments *de novo* on the record. We will not reverse the findings of the lower court unless they are clearly erroneous.” *Smith v Lumbermen’s Mut Ins Co*, 101 Mich App 78, 86; 300 NW2d 457 (1980).

### B. Analysis

“[B]efore affirmative declaratory relief can be granted, it is essential that a plaintiff, at a minimum, pleads facts entitling him to the judgment he seeks and proves each fact alleged, *i.e.*, a plaintiff must allege and prove an actual *justiciable* controversy.” *Shavers v Attorney General*, 402 Mich 554, 589; 267 NW2d 72 (1978). “Therefore, what is essential to an ‘actual controversy’ under the declaratory judgment rule is that plaintiffs plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised.” *Id.* “The threshold question, then, is whether the individual plaintiffs . . . have an interest in the outcome of this litigation sufficient to invoke the controversy-resolving powers of the judiciary.” *Michigan State AFL-CIO v Civil Service Comm*, 191 Mich App 535, 545-546; 478 NW2d 722 (1991).

The standing doctrine recognizes that litigation should be conducted only by a party having “an interest that will assure sincere and vigorous advocacy.” *A litigant attempting to enforce or vindicate a right extended by statute must also show that he will be detrimentally affected in a manner different than the citizenry at large.* [*Id.*, 545 (emphasis added, citations omitted).]

Plaintiffs have not alleged any injury particular to themselves or the citizens of Detroit. Plaintiffs assert no injury other than an alleged violation of the city charter. Plaintiffs failed to cite any specific instance of a failure to perform a clearly required task. Moreover, under § 7-102 of the city charter, the mayor has the authority to conduct the reorganization:

The mayor shall prepare an executive organization plan which, consistent with the law and this Charter, sets forth all agencies of the executive branch and assigns authorized programs, services and activities to each agency.

\* \* \*

The mayor may not reassign or combine the functions of staff departments, but may, except as to departments created under chapters 3, 9, 10, 11, 15 and 16 of this article, assign any of the functions of an operating department to a staff department, reassign the functions of one (1) operating department to another operating department or combine operating departments.

The Consumer Affairs Department is not a staff department, Detroit Charter, art III, and was established in the city charter under Chapter 6 of Article 7. Therefore, under § 7-102, the mayor may reassign the department's functions. In sum, plaintiffs have not shown that there is any case or controversy present here or that the trial court clearly erred in dismissing their claim for declaratory relief.

### III. WRIT OF MANDAMUS

We also reject plaintiffs' assertion of error with respect to the denial of plaintiffs' request for a writ of mandamus.

#### A. Standard of Review

"Courts in Michigan will not interfere with the trial court's refusal to issue a writ of mandamus unless it is evident that such a refusal constitutes a clear abuse of discretion." *State Bd of Ed v Garden City School Dist*, 62 Mich App 376, 381 n 4; 233 NW2d 547 (1975).

An abuse of discretion involves far more than a difference in judicial opinion. It has been said that such abuse occurs only when the result is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." [*Alken-Ziegler v Waterbury Headers Corp*, 461 Mich 219, 227-228; 600 NW2d 638 (1999) (citations omitted).]

"Mandamus is an extraordinary remedy and is appropriate only when there is, in practical terms, no other remedy, legal or equitable, that might achieve the same result. . . . Mandamus will not lie to control the exercise or direction of discretion that is vested in a public official or administrative body." *Musselman v Governor*, 200 Mich App 656, 662; 505 NW2d 288 (1993) (citations omitted).

It is well settled that mandamus is a *discretionary* writ and will issue against public officials only to compel the enforcement of a clear legal duty.

For mandamus to issue (1) the plaintiffs must have a clear legal right to performance of the specific duty sought to be compelled and (2) the defendants

must have a clear legal duty to perform such act, which must be a *ministerial act* which is prescribed and defined by law with such precision and certainty as to leave nothing to the exercise of discretion or judgment. [*Garden City School Dist, supra*, 62 Mich App 381 n 4 (citations omitted).]

“Stated otherwise, mandamus will lie to compel the exercise of discretion, but not to compel its exercise in a particular manner.” *Teasel v Dep’t of Mental Health*, 419 Mich 390, 410; 355 NW2d 75 (1984). “On appeal, this Court will not interfere with the denial of a complaint for mandamus if there is evidence to support the trial court’s decision.” *University Medical Affiliates, PC v Wayne Co Executive*, 142 Mich App 135, 142; 369 NW2d 277 (1985).

## B. Analysis

In this case, plaintiffs have failed to identify any failure to perform acts “prescribed and defined by law with such precision and certainty as to leave nothing to the discretion or judgment.” Plaintiffs argued that “no research is being done, no subpoenas are being issued, no Out Reach [sic] is occurring”; however, plaintiffs offer nothing but their assertion to suggest that these are ministerial tasks.

[O]ur Supreme Court concluded that a writ of mandamus must be supported by proofs on the record. In addition, this Court in *Burger King Corp v Detroit*, 33 Mich App 382, 384; 189 NW2d 797 (1971), addressed the proof requirements in support of mandamus, stating as follows:

“The lower court erred in granting relief to plaintiff solely on the pleadings before it. *Lepofsky v City of Lincoln Park*, [9 Mich App 501; 157 NW 453 (1968), aft rem 48 Mich App 347 (1973).] In a mandamus action, the burden is on the plaintiff to present proof that the defendant has a clear, legal duty to perform in the manner requested. *Toan v McGinn*, [271 Mich 28; 260 NW 108 (1935)]. There was here a complete failure of proofs and, consequently, insufficient basis to grant the relief requested.” [*In re Rupert*, 205 Mich App 474, 478; 517 NW2d 794 (1994).]

Plaintiffs have not shown that the staffing organization of the Consumer Affairs Department is a ministerial function. Plaintiffs have not demonstrated that the court abused its discretion by refusing to issue a writ of mandamus compelling the mayor to reorganize the department along the lines plaintiffs desired. Finding evidence to support the trial court’s decision, we will not interfere with its denial of plaintiffs’ request. *University Medical Affiliates, PC, supra*.

Affirmed.

/s/ Bill Schuette  
/s/ Patrick M. Meter